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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/626,376	07/24/2003	Robert S. Greeff	57226-A-RE	2506
7590	12/04/2007		EXAMINER	
Peter J Phillips Cooper & Dunham LLP 1185 Avenue of the Americas New York, NY 10036				LAVINDER, JACK W
		ART UNIT		PAPER NUMBER
		3677		
		MAIL DATE		DELIVERY MODE
		12/04/2007		PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Best Available Copy

Office Action Summary	Application No.	Applicant(s)
	10/626,376 /Jack W. Lavinder/	GREEFF, ROBERT S. Art Unit 3677

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply:

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1) Responsive to communication(s) filed on 05 November 2007.
 2a) This action is FINAL. 2b) This action is non-final.
 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4) Claim(s) 1-23 is/are pending in the application.
 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
 5) Claim(s) _____ is/are allowed.
 6) Claim(s) 1-23 is/are rejected.
 7) Claim(s) _____ is/are objected to.
 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9) The specification is objected to by the Examiner.
 10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 a) All b) Some * c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) Notice of References Cited (PTO-892)
 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
 3) Information Disclosure Statement(s) (PTO/SB/08)
 Paper No(s)/Mail Date _____

4) Interview Summary (PTO-413)
 Paper No(s)/Mail Date. _____

5) Notice of Informal Patent Application
 6) Other: _____

Application/Control Number:
10/626,376
Art Unit: 3677

Page 2

DETAILED ACTION

Claim Rejections - 35 USC § 103

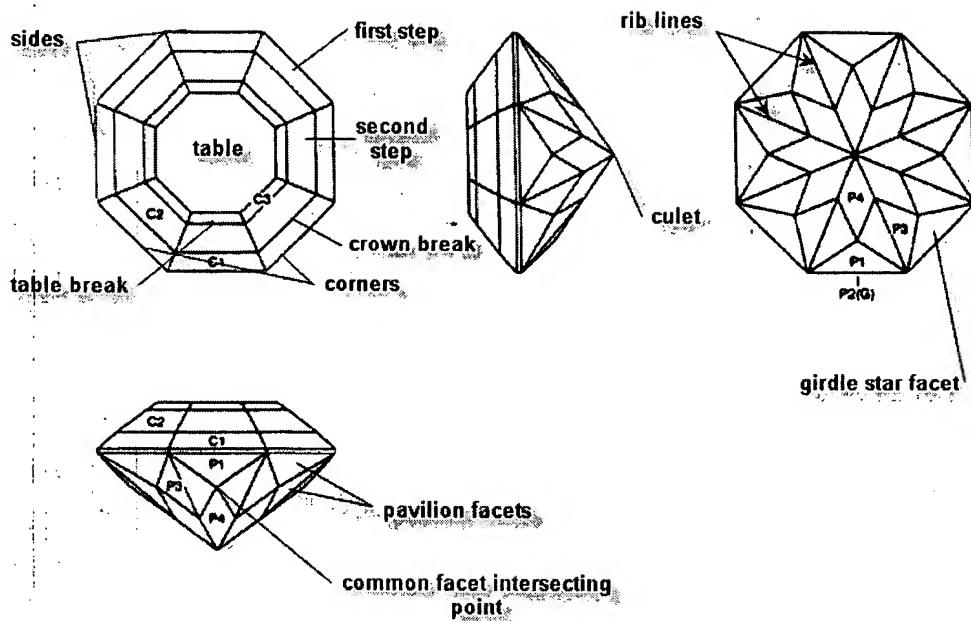
1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

2. Claims 1-23 have been rejected under 35 U.S.C. 103(a) as being unpatentable over non-Patent literature reference, Gram Faceting Designs (GFD) in view of Grossbard, 4020649. GFD discloses a mixed cut diamond (step cut on the crown and brilliant cut on the pavilion. GFD's stone is octagonal in shape with corner crown lengths equal to corner side lengths and four table corner lengths equal to four table side lengths. The pavilion has a culet point with eight rib lines extending in a straight line from the girdle to the culet. The crown also comprises at least two steps with a flat table (see annotated figure). The number and shape of the facets on the pavilion as defined in the claims are shown in GFD.

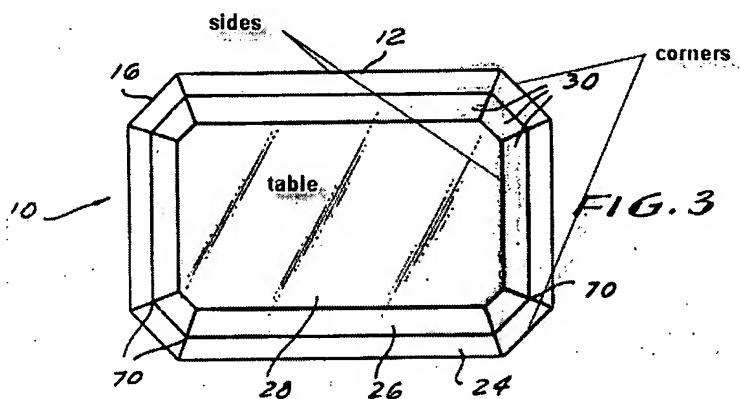
Application/Control Number:
10/626,376
Art Unit: 3677

Page 3



The claims recite that the corner lengths of the crown and table are substantially less than the side lengths of the crown and table. GFD discloses the lengths to be the same.

Grossbard, 4020649, discloses a mixed-cut gemstone having corner lengths less than the side lengths of the table and crown.



Application/Control Number:
10/626,376
Art Unit: 3677

Page 4

The courts have noted that matters relating to ornamentation only, which have no mechanical function, cannot be relied upon to patentably distinguish the claimed invention from the prior art. *In re Seid*, 161 F.2d 229, 73 USPQ 431 (CCPA 1947). The shape of the stone is considered to be ornamental and serves no mechanical function. Therefore, it would have been an obvious design choice to make GFD's stone into the shape of Grossbard's stone in order to change the aesthetical appearance of the stone.

3. The declarations under 37 CFR 1.132 filed 11/5/20007 is insufficient to overcome the rejection of claims 1-23 based upon GFD in view of Grossbard as set forth in the last Office action because: The declaration states that it would not have been obvious to make the combination. The examiner disagrees. Any one skilled in the art would look at both references and combine them to change the ornamental shape of the gemstone. This change in shape would change the color, fire and scintillation of the stone as would be expected by someone skilled in the art. Therefore, when all of the evidence is considered, the totality of the rebuttal evidence of nonobviousness fails to outweigh the evidence of obviousness.

4. The declarations also address secondary considerations of non-obviousness, i.e., commercial success. The declarations by Jane Lucyk and Detra Segar have not been found to be persuasive to overcome the rejections. The declarations have failed to show that the claimed gemstone is the reason for the success of the jewelry line. There has been no comparison of sales from other gemstone lines from the same store for the same period of time. There is no mention of how much marketing and

Application/Control Number:
10/626,376
Art Unit: 3677

Page 5

advertising has been done for the Lucida jewelry line. Is it the same amount of marketing and advertising as has been done with the other jewelry lines? Is the increase in sales do to normal market trends or from the claimed features of the gemstone?

Response to Arguments

5. Applicant's arguments filed 7/5/2007 have been fully considered but they are not persuasive. See rebuttal to declarations in paragraphs 3 and 4.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to /Jack W. Lavinder/ whose telephone number is 571-272-7119. The examiner can normally be reached on Mon-Friday, 9-4:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jennifer Gay can be reached on 571-272-7029. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Application/Control Number:
10/626,376
Art Unit: 3677

Page 6

/Jack W Lavinder/
Primary Examiner
Art Unit 3677

11/30/2007